

Hearing Officer Program Administration

Objective

To establish departmental guidelines for the administration of the Hearing Officer Program. These guidelines are established in accordance with § 2.2-3005 of the Code of Virginia and govern the appointment of hearing officers to hear employee grievances.

Background

The Department of Employment Dispute Resolution (EDR) selects hearing officers for state employee grievance hearings from two sources, in the following priority: (1) full-time hearing officers, who are attorneys, and are employed by EDR as classified state employees and (2) part-time hearing officers, who are attorneys in private practice, and who are on the list maintained by the Supreme Court of Virginia. Va. Code § 2.2-3005(B). In addition to the training requirements imposed by the Supreme Court, to qualify for consideration as a hearing officer by EDR, each hearing officer must attend annually at least one day of training in employment law or state personnel policies and organizations, and participate in a continuing program of training and orientation as determined by the Director of EDR. Va. Code § 2.2-3005(B).

The Office of the Executive Secretary (OES) of the Supreme Court maintains the official records relating to hearing officer training and qualification for the part-time hearing officers on its list. Annually, the OES provides to EDR a list of hearing officers qualified to serve for EDR. Interim changes in hearing officers' qualification status are expected to be provided by the OES to EDR. Questions regarding a hearing officer's status on the list maintained by the Supreme Court must be directed to the OES.

Organization of the List

The part-time hearing officers on the list provided by the OES are assigned by EDR to one of six geographic regions. This geographic assignment is necessitated by the statutory mandate that grievance hearings be held in the locality in which the grievant is employed. Va. Code § 2.2-3004(F). Currently, the geographic regions are as follows: (1) Richmond; (2) Northern Virginia; (3) Hampton Roads; (4) Central Virginia; (5) Western Virginia; and (6) Southwest Virginia. Full-time hearing officers have statewide responsibility and may be assigned to conduct hearings in any geographic region. EDR may adjust the regional lines and /or regional assignments of hearing officers as required by operational need.

Eligibility for Selection

Requests for the selection of hearing officers are submitted to EDR on a Grievance Form B (Appointment of Hearing Officer). Upon receipt of this request, the

first assignment option is to determine if a full-time hearing officer can conduct the hearing. If this assignment option is not available, a part-time hearing officer is selected from the appropriate geographic region of the Supreme Court's list, using a system of rotation. Unless ineligible as determined by EDR or by the OES (described further below), the part-time hearing officer within the appropriate geographic region with the oldest previous EDR selection date will be evaluated to determine: (1) whether the hearing officer is available; and, (2) whether a conflict of interest exists that precludes the selection of the hearing officer. A part-time hearing officer is deemed unavailable by EDR if:

- the hearing officer has represented any party to an employee grievance on or since the effective date of this change (*August 10, 2001*). The hearing officer must disclose any such representation to EDR each time he or she is contacted for a potential assignment. This restriction may be waived by EDR, if required by special or unusual operational need, and after full disclosure to each party to the grievance hearing.
- the hearing officer has an assigned case from EDR in which he or she has not rendered a written decision (an exception will be made if all other hearing officers within that region also have a current incomplete case);
- the hearing officer fails to return EDR's call within 24 hours; or,
- the hearing officer is unable to meet the 30 calendar day requirement for conducting the hearing and issuing a written decision.

Hearing Officer Selection

Full-time hearing officers will be assigned cases based on workload considerations. If a part-time hearing officer is unavailable or has a conflict of interest, the part-time hearing officer within the appropriate geographic region who has the next oldest previous EDR selection date is evaluated.

After the above-described coordination is complete, the EDR Consultant serving as the Hearings Coordinator issues a letter of selection on behalf of the Director to the hearing officer and the parties. Upon selection from the Supreme Court's list, the part-time hearing officer's name is placed at the bottom of the regional rotation and his or her previous selection date is updated.

An exception will be made to the hearing officer appointment process in instances in which multiple grievances originating from the same action or event are qualified for hearing. In such instances, and in the interest of consistency, fairness and efficiency, every effort will be made to assign all "companion" grievances to the same hearing

officer to decide. The part-time hearing officer's selection date will be updated with each "companion" appointment.

Ineligibility for Selection

The Director of EDR may determine that a part-time hearing officer on the Supreme Court's list is not eligible for selection as a hearing officer for grievance hearings. Va. Code § 2.2-1001(6). Factors which the Director may consider when assessing a hearing officer's eligibility for continued selection include, but are not limited to, the following: (1) the quality and timeliness of the hearing officer's work; (2) the fitness of the hearing officer from the standpoint of his professionalism, temperament and demeanor; or (3) a pending recommendation from EDR to the OES to have the hearing officer removed from the Supreme Court's list.

If a hearing officer is deemed ineligible for further selection by EDR, the hearing officer will be advised in writing by the Director of EDR. The Director will advise the hearing officer of the reason for the Director's determination. The hearing officer may request that the Director reconsider his decision. Such a request must be made in writing or in a meeting with the Director. The Director will meet with the hearing officer upon such a request. Through the letter or the meeting, the hearing officer may present additional facts, which the Director may consider in making a final decision regarding the hearing officer's eligibility for continued selection. At the discretion of the Director, the hearing officer may be assigned additional grievance cases pending the outcome of the hearing officer's request for reconsideration.

Additionally, during periods of reduced workload, it may become necessary to reduce the number of part-time hearing officers on the active list, within selected regions. Should this become necessary, the Director will exercise his discretion in determining a reasonable process for selecting hearing officers for inactive status.

Full-time hearing officers are classified employees whose terms of employment, including service as a hearing officer, are governed by relevant state human resource policy and the grievance procedure.

Disqualification

A hearing officer must voluntarily disqualify himself or herself and withdraw from any case in which he or she cannot guarantee a fair and impartial hearing or decision or when required by the applicable rules governing the practice of law in Virginia. Upon notification that a hearing officer has withdrawn, EDR will notify the parties and reinitiate the process to select a new hearing officer. A request from either party to a grievance for the disqualification of a hearing officer must be in writing and will be addressed as a compliance ruling.

Evaluation

Hearing officer performance is evaluated on a continuing basis to determine timeliness of decisions, professional demeanor, ability to conduct orderly hearings, temperament, legal ability, and administrative ability. Following receipt of the written decision, the parties are asked to evaluate the hearing officer's performance by completing an evaluation questionnaire (Enclosure). These evaluations are a key consideration in assessing hearing officer performance.

Upon request of the OES of the Supreme Court, the Director conducts an evaluation of the performance of part-time hearing officers who have requested a renewal term. In evaluating part-time hearing officers' overall performance, the Director considers party evaluations, hearing statistics (including record of timeliness), and the quality of written decisions. Part-time hearing officers not recommended for a renewal term will be deemed ineligible for further selection by EDR and will be advised in writing by the Director. Because full-time hearing officers are classified State employees their performance will be governed by DHRM Policy 1.40.

Compensation

EDR is committed to assuring that hearing officer fees are reasonable and cost effective for agencies while fairly compensating hearing officers. Other important objectives include cost stability and budget predictability. *(Effective Change: May 1, 2003): To accomplish these objectives, a single fee schedule has been established:*

Flat Rate Fee for Full-time and Part-time Hearing Officers- Annually, the Director establishes a flat rate fee for hearing officer services, effective for the new fiscal year. The established fee amount covers all services and disbursements incurred in conducting an employee grievance hearing, including travel, trip, or office expenses. Grievances that are settled or concluded prior to the hearing are billed on a prorated basis-

- 10% after the appointment and opening of a case file.
- 25 % after the prehearing conference is scheduled.
- 50 % after the prehearing conference is conducted.
- 100 % if the hearing officer travels to the hearing site.

Claudia T. Farr

Date

This change amends EDR Policy #2.01, Hearing Officer Program Administration, effective May 1, 2001.

This policy is declarative of existing EDR practice regarding the administration of the Hearing Officer Program. To ensure accuracy and integrity, a Consultant has been assigned to administer this program in conjunction with the Chief Deputy Director and/or the Director. Hearing officers are routinely informed of this process.

This policy supercedes EDR Policy No. 2.01, Hearing Officer Selection, dated December 12, 2000.